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7 INTERAXON INC., et al.,  
8 Plaintiffs,  
9 v.  
10 NEUROTEK, LLC, et al.,  
11 Defendants.  
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Case No. 15-cv-05290-KAW

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**ORDER DENYING PLAINTIFFS'  
MOTION TO EXTEND DEADLINES  
AND VACATING HEARING DATE ON  
MOTION FOR DEFAULT JUDGMENT**  
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Re: Dkt. No. 72, 134

On May 2, 2016, Plaintiffs InteraXon Inc. and InterXon U.S., Inc. filed a motion for default judgment against Defendants NeuroTek, LLC and MindWaves, LTD. (Dkt. No. 72.) Plaintiffs' motion for default judgment is currently set for hearing on November 17, 2016. (Dkt. No. 113.) Plaintiffs have now filed a motion to extend the case deadlines until the Court rules on Plaintiffs' motion for default judgment. (Dkt. No. 134.) In support, Plaintiffs argue that "grant[ing] InteraXon's Motion for Default Judgment, i.e., finding the '129 Patent is not infringed and/or is invalid, [will allow this case to] be disposed of entirely over the short term—obviating the need to conduct expensive and time consuming discovery and claim construction." (*Id.* at 2.) In short, Plaintiffs essentially propose litigating the merits of this case through a motion for default judgment, in which Defendant Cowan is unable to participate because he cannot represent the corporate Defendants.

Per Federal Rule of Civil Procedure 54(b), "when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay . . ." In the context of default judgments, the Supreme Court in *Frow v. De La Vega* held that "where a complaint alleges that defendants are jointly liable and one of them defaults, judgment should not

1 be entered against the defaulting defendant until the matter has been adjudicated with regard to all  
2 defendants." *In re First T.D. & Inv., Inc.*, 253 F.3d 520, 532 (9th Cir. 2001) (explaining *Frow v.*  
3 *De La Vega*, 82 U.S. 552 (1872)). In *In re First T.D. & Investment, Inc.*, the Ninth Circuit  
4 extended the *Frow* principle to similarly-situated defendants, even if they were not jointly liable,  
5 in order to avoid inconsistent results. There, a bankruptcy trustee filed an action against 132  
6 investors-defendants; many of the defendants failed to answer and had default judgment entered  
7 against them, while several defendants did appear and had summary judgment entered in their  
8 favor. *Id.* at 525, 532. For every defendant, however, the central question was whether California  
9 Business and Professions Code § 10233.2 applied to the transaction between the defendant and the  
10 debtor. *Id.* at 523, 532. Although each defendant had entered into a separate transaction with the  
11 debtor, the Ninth Circuit explained that "each transaction . . . followed an identical pattern with  
12 almost identical legal documents" and "the central issue concerning each transaction was the  
13 same," such that "[a] result in which the bankruptcy court finds § 10233.2 applies to certain  
14 Defendants and not to others is both incongruous and unfair." *Id.* at 532. The Ninth Circuit  
15 therefore concluded that "the bankruptcy court violated the *Frow* principle and abused its  
16 discretion by entering final default judgments, pursuant to Fed.R.Civ.P. 54(b), that directly  
17 contradicted its earlier ruling in the same action." *Id.* at 522-23.

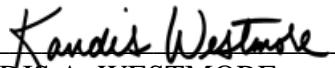
18 The instant case is comparable to *In re First T.D. & Investment*. Plaintiffs seek a  
19 declaratory judgment of non-infringement and invalidity of the '129 Patent, a central issue that is  
20 the same as to both Defendant Cowan and the corporate Defendants. Plaintiffs themselves argue  
21 that granting the motion for default judgment against the corporate Defendants would allow the  
22 case to "be disposed of *entirely*" because the Court would have already found that the '129 Patent  
23 was not infringed and/or is invalid. (Dkt. No. 134 at 2 (emphasis added).) Applying the *Frow*  
24 principle, the Court cannot enter default judgment against the corporate defendants "until the  
25 matter has been adjudicated with regard to" Defendant Cowan. Otherwise, the Court will either  
26 risk entering contradictory judgments or effectively prevent Defendant Cowan from adjudicating  
27 this case on the merits.

28 For those reasons, the Court DENIES Plaintiffs' motion to extend the case deadlines until

1 after the motion for default judgment is decided. Further, the Court finds it appropriate to have the  
2 motion for default judgment heard after the merits of the instant case are determined. The Court  
3 therefore VACATES the November 17, 2016 hearing date, and will set a hearing date for the  
4 motion for default judgment at a later date.

5 IT IS SO ORDERED.

6 Dated: September 27, 2016

  
7 KANDIS A. WESTMORE  
8 United States Magistrate Judge

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United States District Court  
Northern District of California